

Greater Kansas City Roofing; and the New GKC Roofing, Inc., alter ego to or successor of Greater Kansas City Roofing; and Maude Clementine Clarke and United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL-CIO. Case 17-CA-11502

November 25, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On October 23, 1989, Administrative Law Judge Steven M. Charno issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Supplemental Decision and Order.

The judge found that the Respondents Greater Kansas City Roofing (GKC) and the New Greater Kansas City Roofing (New GKC) are liable, jointly and severally, for the entire backpay award which represents certain fringe benefit contributions and membership fees owed to the United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL-CIO.² The judge also found that Maude Clementine (Tina) Clarke, New GKC's sole owner, should not be held individually liable for her company's backpay obligation. He, therefore, dismissed the backpay specification as it pertains to Tina Clarke.

The General Counsel argues that Clarke should be held personally liable because she failed to observe corporate formalities so as to insulate her from the backpay liabilities of New GKC and she so mixed her personal affairs, principally her escort service, with the business operations of New GKC that the corporate veil should be pierced. We find merit in the General Counsel's argument.

Section 10(c) of the Act empowers the Board with broad authority to fashion appropriate remedies to meet the needs of a particular situation so that "the victims of discrimination may be treated fairly."

¹The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²There was no exception to this finding.

Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941). As a policy matter, the task for the Board is to determine the proper balance of the legal rights involved. When the incentive value of limited liability to corporations and their owners is outweighed by the competing value of basic fairness to parties dealing with a corporation, the Board should look past that corporation's formal existence and hold controlling individuals liable for "corporate" obligations. *Labadie Coal Co. v. Black*, 672 F.2d 92, 96 (D.C. Cir. 1982).

Contrary to the judge's intimation, the Board is not limited to piercing the corporate veil only in cases where the corporate status is used to perpetrate fraud. See, e.g., *Concrete Mfg. Co.*, 262 NLRB 727, 729 (1982). Among the factors to which the Board traditionally looks in ordering that the corporate veil be pierced where intermingling of individual and corporate affairs have occurred are those present in this case: the apparent undercapitalization of a one-person corporation; the failure to observe corporate formalities; the nonfunctioning of officers or directors; the absence of corporate records; and the use of the corporation as a facade for the operations of the dominant stockholder.³ Indeed, faithfulness to corporate formalities is one of the litmus tests of the extent to which individuals actually view the corporation as a separate being. *Id.* at 97. Moreover, the Board may pierce the corporate veil, because justice so requires, where the individual's personal affairs and the company's affairs have been so intermingled that corporate boundaries have been effectively blurred. See, e.g., *Dahl Fish Co.*, 299 NLRB 413 (1990).

Tina Clarke had been a substantial creditor of GKC, a roofing company owned by her sister-in-law, Judy, and run by her brother, Charlie, and located in Kansas City, Kansas. Pursuant to a note and security agreement, Tina Clarke took control of the company when she believed her investment was in jeopardy.⁴ Shortly thereafter, she decided, on advice of counsel, to run GKC by setting up a new corporation, later known as

³We have applied a Federal standard in determining whether a person or entity should be liable for a backpay award in an unfair labor practice case. See *NLRB v. Fullerton Transfer & Storage*, 910 F.2d 331, 335 (6th Cir. 1990), and cases there cited; *Esmark, Inc. v. NLRB*, 887 F.2d 739, 755 fn. 26 (7th Cir. 1989). We observe that even under state law the same result might be reached after following a similar approach balancing various factors. See, e.g., *Kilpatrick Bros. v. Poynter*, 473 P.2d 33, 41-42 (Kan. 1970) (where board of directors' meetings were not held, corporate reporting was largely disregarded, and corporate undercapitalization had occurred); *Mackey v. Burke*, 751 P.2d 322, 327 (1984) (where the corporation had failed to file an annual report or pay the annual franchise tax and corporate funds had been used to pay off a personal obligation).

⁴The credited evidence shows that when Clarke acquired GKC she was not aware of the unreported Board Decision and Order (268 NLRB 108) issued on December 2, 1983, finding that GKC violated Sec. 8(a)(5) and (1) of the Act and ordering a make-whole remedy.

New GKC⁵ Although GKC assets were transferred to Clarke and she later made loans to New GKC, there is no evidence that New GKC was capitalized, sufficiently or otherwise.⁶

Clarke also served as the sole shareholder, officer, and director of New GKC, the successor of GKC. While Clarke executed and filed articles of incorporation for New GKC with the State of Kansas, she never adopted any bylaws, held any corporate meeting, or designated or received any paid-in capital. She also failed to obtain stock or bills of sale for the GKC assets transferred to New GKC. These failures can hardly be characterized as inattention or an oversight on her part, especially in view of the fact that she had retained counsel to assist her in setting up her new corporation.

After she took over the business, Clarke required New GKC to assume payments on a personal loan she had given to New GKC, purportedly to cover New GKC's payroll, but she failed to formalize the loan in a written loan agreement. The absence of this corporate loan record is one obvious example of Clarke's failure to view the corporation as a separate entity.⁷

Clarke also mixed her personal affairs and New GKC's operations to disguise her escort service as a roofing business⁸ Clarke sometimes used the fictitious name "AAC Roofing," a sham entity, to attract customers and employees to New GKC. She also used the AAC Roofing name, however, in order to establish credit card collection accounts and a checking account for Affaire d'Amour, her escort service business. In addition, Clarke, through New GKC, paid Affaire d'Amour's monthly telephone bill in July 1987 and used New GKC's address and telephone number to obtain another separate checking account for her escort business. These dealings indicate that New GKC, as a corporate entity, was, at least in part, a contrived con-

venience repeatedly used for personal purposes by Clarke.

Under all the above circumstances, we find Clarke personally liable for the health and welfare, pension fund, and training contributions and the membership fees owed by the Respondent Companies to the Union.

ORDER

The National Labor Relations Board orders that the Respondents, Greater Kansas City Roofing and the New Greater Kansas City Roofing, Kansas City and Shawnee, Kansas, and Respondent Maude Clementine Clarke, their officers, agents, successors, and assigns, shall make the following payments, including interest thereon, as required by the Board's initial Order in this proceeding. The payments to be made and the amounts, including interest, are as follows:

Health and Welfare Fund	\$48,668.13
Pension Plan	67,341.04
Apprenticeship Training Program	6,473.26
Membership Fees	11,260.04
<i>Total</i>	<i>\$133,742.47</i>

Stephen E. Wamser, Esq., for the General Counsel.

Jack L. Campbell, Esq. (Shugart, Thomson & Kilroy), of Kansas City, Missouri, for the Respondents.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

STEVEN M. CHARNO, Administrative Law Judge. On December 2, 1983, the National Labor Relations Board (Board) issued a Decision and Order directing Greater Kansas City Roofing (GKC), its officers, agents, successors, and assigns to, inter alia, make its employees whole for any losses they suffered as a result of its unfair labor practices and bargain with United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL-CIO (Union).¹ On April 23, 1984, the United States Court of Appeals for the Tenth Circuit entered a judgment enforcing the Board's Order. On November 5, 1985, the court entered a contempt adjudication against GKC and its officers, agents, successors, and assigns. On November 13, 1985, the contempt adjudication, under a cover letter from the Board's Regional Office, was delivered to GKC.

On October 21, 1988, the General Counsel issued a backpay specification and notice of hearing alleging that GKC, the New Greater Kansas City Roofing (New GKC), and Maude Clementine (Tina) Clarke (collectively Respondent) were obliged to make certain fringe benefit contributions and fee remittances to the Union. By answer dated November 14, 1988, Respondents New GKC and Clarke denied any obligation to make such contributions and remittances. A hearing was held before me in Mission, Kansas, on March 1 and 2, and April 18 and 19, 1989. On April 19, the backpay specification was amended to increase Respondents' alleged back-

⁵ Clarke maintained critical ties with GKC's operations hiring her brother Charlie to run New GKC in the same way he had managed GKC. In late 1985 she even moved New GKC's operations to her brother's home in Shawnee, Kansas.

⁶ Cf. *Fullerton Transfer*, supra at 341 (owner-operators were not held personally liable where evidence of sufficient capitalization of their corporation was contained in the record).

⁷ See *Honeycomb Plastics Corp.*, 304 NLRB 570 (1991) (individual owner who consistently commingled corporate and personal funds and ignored corporate formalities, including arranging informal personal loans to his companies, held personally liable for the backpay owed by his companies). Cf. *Fullerton Transfer*, supra at 341 (personal liability was not imposed on owner-operators where company was kept separate and corporate records were maintained).

⁸ See *Metropolitan Teletronics*, 303 NLRB 793 (1991) (individual owner who commingled corporate and personal funds held personally liable for backpay owed by his company). Member Oviatt concurred, relying in particular on the obstructive behavior of the owner-operator and on his failure to produce evidence to rebut financial records that showed some commingling of personal and corporate funds. See also *IMCO/International Measurement & Control Co.*, 304 NLRB 738 (1991) (individual Dybels made personal use of the assets of their corporate entities).

¹ See 268 NLRB No. 41 (not published in Board volumes).

pay obligation. At the close of the hearing, counsel for Respondents presented an oral argument and was permitted to withdraw from the proceeding. A brief was filed by General Counsel under extended due date of June 2, 1989.

FINDINGS OF FACT

A. *Uncontested Matters*

Respondent GKC was found by the Board in the underlying unfair labor practice proceeding to be an employer within the meaning of Section 2(6) and (7) of the National Labor Relations Act (Act), as amended. During the backpay proceeding, Respondent New GKC was admitted to be, and I find is, an employer within the meaning of the same statutory provision.

Uncontested evidence adduced at the backpay hearing establishes that payment of the following fringe benefits and fees is required to remedy the unfair labor practices which the Board previously found to exist:

Health and Welfare Fund	\$48,668.13
Pension Plan	67,341.04
Apprenticeship Training Program	6,473.26
Membership Fees	11,260.04
<i>Total</i>	<i>\$133,742.47</i>

B. *The Old Company*

Prior to November 20, 1985, GKC was a roofing company with a business address of 1725 Southwest Boulevard, Kansas City, Kansas. Located at that address was a feed store in which GKC maintained a single-room office and a telephone with the listed number 722-2229. At that time, GKC was owned by Judy Clarke and managed by her husband, Charlie Clarke. The business employed Jana Graves as a bookkeeper and clerical employee, and its roofing employees included Oscar Sutton, Bill Boyle, and Dale Pemberton.

In late 1984, Tina Clarke, Charlie's sister, began loaning money to GKC and, on a number of occasions, made payments directly to the Company's suppliers and employees.² Miss Clarke kept a personal journal of the amounts which she believed were due her from GKC.³ That document shows an outstanding balance in excess of \$48,000 in August 1985. At that point, Tina Clarke began to require certain changes in GKC's operations: timeclocks were installed in the Company's trucks and a yellow page advertisement was ordered under the name of AAC Roofing Co. (AAC).⁴

Tina Clarke's journal indicates that the balance GKC owed her had been reduced to \$38,472.16 by September 14, 1985. At that time, she concluded that GKC would be unable to make further repayments and she refused to advance addi-

tional moneys on the Company's behalf. Shortly thereafter, Tina Clarke consulted Edward White, an attorney, explaining that she had loaned money to GKC and wished to protect her investment. White suggested the execution of a note and security agreement and prepared both documents. These documents, which were signed by Judy Clarke, recite a principal sum of \$38,000, an October 5, 1985 date of execution and collateral consisting of "all equipment and fixtures currently owned by Judith Clarke, d/b/a Greater Kansas City Roofing Co., as well as a security interest in all vehicles."⁵

"Almost immediately after" the preparation of these documents,⁶ Tina Clarke again met with White, informed him that GKC was "not going to make it" and asked his advice. White suggested that she set up a new corporation and attempt to run the business herself. She accepted this advice, and White prepared Articles of Incorporation in the name of New GKC, which were executed on October 10, 1985.⁷ Tina Clarke was the sole shareholder, officer, and director of the New GKC,⁸ which never adopted bylaws or held a corporate meeting.⁹

There was no discussion at any of the meetings between Tina Clarke and White concerning "the union, the National Labor Relations Board, an unfair labor practice proceeding, or any judgments" against GKC, and the balance of the credible evidence does not establish that Tina Clarke was aware on November 20, 1985, that the Board had found GKC to be in violation of the Act or that a judgment was outstanding against GKC.¹⁰

⁵ While a subsequently prepared "Financing Statement" indicated that the pledged equipment and vehicles were to be set forth on an appendix to the security agreement, only the former were so enumerated.

⁶ White's statement contained this timeframe, while he testified on cross-examination that the meeting took place on or "slightly before" October 10, 1985.

⁷ The foregoing findings are based on White's credited statement and testimony. General Counsel notes on brief that the articles were filed on October 15, while the financing statement was not filed until October 31; I do not find that this sequence of events casts doubt on White's credibility. Finally, White's testimony concerning the possible presence of Charlie Clarke at one of his meetings with Tina was so speculative (i.e., prefaced "I can't really recall" and phrased "I think" and "perhaps") as to be without probative value.

⁸ Tina Clarke so testified.

⁹ Counsel for the parties so stipulated. There is no evidence as to whether the New GKC did or did not designate or receive paid-in capital during the timeframe specified by Kan. Stat. Ann. 17-6402 and 17-6404 (of which administrative notice is taken). Since any facts concerning paid-in capital serve only as a foundation for General Counsel's argument that the corporate veil should be pierced, I must find that General Counsel did not meet the burden of proof required to establish the factual underpinning for this portion of her argument.

¹⁰ I credit White's statement concerning his conversations with Tina Clarke. Charlie Clarke's June 17, 1986 deposition stated that Tina did not know of GKC's involvement with the Board until "after" she had become aware of the Company's financial problems because Charlie had not been "above board" about GKC's "Labor Board problems." Given the fact that the New GKC acquired GKC's assets shortly after Tina became alarmed over the Company's financial problems, I cannot find that Charlie Clarke's deposition establishes that Tina had knowledge of the unfair labor practice litigation at the time of the purchase. Similarly, I find less than conclusive Tina Clarke's "guess" that she first became aware of the outstanding judgment in this proceeding "whenever we filed for the new

² General Counsel contends that Tina Clarke paid herself certain sums for reasons other than the reimbursement of expenses during this period. While this contention may be material to the question of whether Miss Clarke dealt candidly with her brother and his wife, I find it to be of little relevance to the issues before me.

³ While this journal contains numerous inaccuracies which render it useless as an accounting document, it does evidence the intent with which Tina Clarke disbursed funds on behalf of GKC.

⁴ I credit Charlie Clarke's testimony that AAC was merely a fictitious business name used by GKC in order to secure a listing at the beginning of the "Roofing Contractors" classification in the yellow pages.

C. The New Corporation

In effectuation of his prior advice, White prepared an "Acknowledgment of Transfer to Secured Party in Lieu of Foreclosure" which chronicled the November 20, 1985 transfer of the pledged assets.¹¹ With the exception of one truck later purchased by Tina Clarke, all of the New GKC's vehicles, equipment, and supplies were transferred from GKC.¹² The New GKC used the business address, telephone numbers, storage facilities, company logo, and bid format previously employed by GKC.¹³ In addition, the New GKC retained some customers of and honored some bids made by GKC.¹⁴ All the New GKC's roofers and its sole clerical worker had been employees of GKC, and Charlie Clarke was hired by the New GKC "to go out in the field and run the business" in the same way he had managed the operations of GKC.¹⁵ Tina Clarke remained intermittently active in the New GKC's affairs until at least September 1988.¹⁶

In early December 1985, Miss Clarke moved the operations of New GKC to her brother's home in Shawnee, Kansas.¹⁷ At that time, she had a telephone installed at the new office, using the 722-2229 number, as well as one of the listings which appeared in the yellow page advertisement for AAC. New GKC paid for both the installation of and subsequent service to the Shawnee listings. The yellow page advertisement for AAC contained a second number which reached a telephone in Miss Clarke's residence. There is no indication in the record that either the AAC advertisement or the telephone listings appearing therein were employed for the benefit of any entity other than the New GKC. When customers called an AAC listing to request service, any ensuing jobs were bid, performed, and invoiced by the New GKC, although payments were occasionally made to AAC.¹⁸ On one occasion, a classified advertisement for roofing employees was placed in the local newspaper under AAC's name and telephone number, at a time when the New GKC's account with the newspaper was "overdue."¹⁹

The record contains extensive evidence that Miss Clarke used the AAC name when she established credit card collec-

ownership." The speculative nature of this testimony aside, such an awareness could have occurred either before or after the transfer of assets on November 20, 1985. If it had occurred prior to that time, it would seem overwhelmingly likely that the matter would have been raised in Tina Clarke's consultations with her attorney.

¹¹ The document was not executed by Judy Clarke until November 26.

¹² Tina Clarke so testified.

¹³ This finding is based on the relevant records of the two businesses.

¹⁴ This finding is based on the relevant records of the two businesses.

¹⁵ Tina Clarke so testified.

¹⁶ This finding is based on the records of the New GKC.

¹⁷ Although the New GKC continued to use business forms carrying the old Kansas City address, the record appears to be silent on the question of whether the corporation still maintained an office at that location. There is, however, no reason to believe that the New GKC stopped using the Kansas City address as a mail drop.

¹⁸ This finding is based on the records of the New GKC and on the credited testimony of Charlie Clarke to the effect that customers would sometimes make a check out in the name of the company which they had originally called for service and that "you don't argue with the check."

¹⁹ I credit Charlie Clarke's explanation of the reason that the New GKC used AAC's name on this occasion.

tion accounts and a checking account in order to operate her escort service, *Affaire d'Amour*. Although the escort service maintained a different telephone listing from those of the New GKC and AAC, Miss Clarke caused the New GKC to pay *Affaire d'Amour's* monthly telephone bill in July 1987.

In January 1987, Tina Clarke was arrested for operating her escort service and her credit card collection accounts in the name of AAC were cancelled. Tina Clarke then opened a checking account in the name of M.C.C. Enterprises (MCC), using the New GKC's telephone number and the address of the feed store in Kansas City. When she was unable to secure credit card collection accounts under the MCC name, Tina Clarke began using the accounts of JAC Enterprises (JAC), a business owned by her brother. There is no probative evidence that Tina Clarke's use of JAC involved the New GKC in any way.²⁰ After the police seized the MCC checkbook, Tina Clarke opened a checking account under the further fictitious business name of The Clarke Company in April 1987, again using the address of the feed store in Kansas City. There is no evidence that Tina Clarke ever used the New GKC telephone number or the Kansas City address in connection with her escort service, other than to have one or both printed on the checks used by MCC and The Clarke Company.

D. Discussion

The principal issue in this proceeding turns, not on a determination of the appropriate amount of backpay, but on the question of which entities should make the payment. General Counsel contends that GKC, the New GKC, and Tina Clarke are all individually liable for the entire amount. Respondents demur.

The legal context for analyzing the issue of liability is well established. The bona fide purchaser of a business is a successor employer if it carries on the business of its predecessor without interruption or substantial change in the method of operation, the employee complement or the supervisory personnel. *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 171 (1973). Based on the continuity of employees and operations set out above, I find the New GKC to be the successor employer of GKC. As a successor employer, the New GKC may held liable to remedy the unfair labor practices of its predecessor where management representatives, who had full knowledge of those practices, moved from the predecessor to the successor. See *Memphis Truck & Trailer*, 284 NLRB 900 (1987). Given Charlie Clarke's movement between the businesses, I find the New GKC liable for GKC's backpay obligation.²¹

General Counsel argues that the corporate veil between Tina Clarke and the New GKC should be pierced and that Tina Clarke should be held individually liable for her corporation's backpay obligation. In support of this argument, General Counsel correctly notes that "the corporate veil will be pierced whenever it is employed to perpetrate fraud, evade existing obligations or circumvent a statute." *Concrete*

²⁰ While Tina Clarke admitted that a New GKC employee had processed the escort service's charges in the name of JAC "during the daytime," the record does not establish whether this processing took place before, during or after scheduled working hours or during the employee's luncheon or break periods.

²¹ Given the finding in text, General Counsel's alternative argument that GKC and the New GKC are alter egos is moot.

Mfg. Co., 262 NLRB 727, 729 (1982). Citing *Edwin R. O'Neill*, 288 NLRB 1354 (1988), and *Edwin R. O'Neill*, 288 NLRB 1394 (1988), for the proposition that individual liability may be found when the affairs of an individual and a corporation have been "so intermingled that no distinct corporate boundaries existed," General Counsel contends that five facts demonstrate the existence of such an intermingling in this case: (1) both Tina Clarke and the New GKC used the name AAC, although in separate and distinct ways and to effect wholly different ends, (2) Tina Clarke used the New GKC telephone number on the MCC checks, (3) she used the address of the feed store in Kansas City (where the New GKC had once maintained an office and telephone) on the MCC and The Clarke Company checks, (4) the New GKC paid a telephone bill for Tina Clarke's escort service, and (5) the New GKC failed "to observe corporate formalities."

I am forced to reject General Counsel's argument for two reasons. First, I do not believe that the five facts cited by General Counsel constitute the degree or quality of intermingling of affairs which was found to establish the absence of corporate boundaries in the *Edwin R. O'Neill* cases. More significantly, the cases cited on brief in which the Board saw fit to pierce the corporate veil, including the *Edwin R. O'Neill* cases, all involved attempts to fraudulently use the corporate veil to defeat a finding of liability or to frustrate a backpay order. See *Concrete Mfg. Co.*, supra; *Chef Nathan Sez Eat Here, Inc.*, 201 NLRB 343, 344 (1973); *Riley Aeronautics Corp.*, 178 NLRB 495, 501 (1969). Here, the record contains no suggestion that Tina Clarke used the corporate status of the New GKC in an attempt to "perpetrate fraud, evade existing obligations or circumvent a statute." Accordingly, I decline to pierce the corporate veil, and I find that Tina Clarke is not individually liable for the backpay obligation which is the subject of this proceeding.

CONCLUSIONS OF LAW

1. Since on or about November 20, 1985, Respondent New GKC has been and is now an employer within the meaning of Section 2(6) and (7) of the Act.

2. On or about November 20, 1985, Respondent New GKC foreclosed on and acquired the business of Respondent

GKC and, since that time, has continue to run the business in basically unchanged form and has been and is the successor employer of Respondent GKC.

3. Because management officials with full knowledge of Respondent GKC's unfair labor practices moved from the predecessor to the successor corporation, Respondent New GKC is charged with actual notice of such liability at the time it acquired the business of Respondent GKC. Respondent New GKC is charged with actual notice of such liability at the time it acquired the business of Respondent GK.

4. Respondents GKC and New GKC are each individually liable for backpay in the amount of \$133,742.47.

5. A preponderance of the credible evidence does not establish that Respondent Tina Clarke is individually liable for any portion of the backpay obligation found.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²²

ORDER

The Respondents, Greater Kansas City Roofing, Kansas City, Kansas, and the New Greater Kansas City Roofing, Inc., Shawnee, Kansas, jointly and severally, their officers, agents, successors, and assigns, shall make the payments, together with interest thereon, as required by the Board's initial Order in this proceeding.

Health and Welfare Fund	\$48,668.13
Pension Plan	67,341.04
Apprenticeship Training Program	6,473.26
Membership Fees	11,260.04
<i>Total</i>	\$133,742.47

IT IS FURTHER ORDERED that all allegations of the backpay specification not specifically found are dismissed.

²² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.